

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI,
GREENVILLE DIVISION**

MARK LABOUE

Plaintiff,

v.

CASE NO. 4:17-cv-00095-DMB-JMV

METSO MINERALS INDUSTRIES,
INC. a/k/a METSO MINERALS
FROZEN PENSION PLAN and
JOHN DOES 1, 2 and 3,

Defendants.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, the Plaintiff, Mark LaBouve (hereinafter referred to as "Plaintiff" or "LaBouve"), by and through counsel of record, and files this Motion for Summary Judgment pursuant to Rule of Civil Procedure 56. Defendant Metso Minerals Industries, Inc. a/k/a Metso Minerals Frozen Pension Plan (hereinafter referred to as "Metso" or Defendant") filed a Motion to Dismiss (ECF # 3) and Plaintiff has responded (ECF # 13). The material facts are not in dispute and Plaintiff is entitled to summary judgment. Since this is a claim for employee benefits, which were denied, the Court may decide the issues based upon the record and the record as a whole is incorporated in this Motion for all purposes.

WHEREFORE, PREMISES CONSIDERED, Plaintiff moves for summary judgment and a determination that he is entitled to his vested retirement benefits, plus attorney's fees and costs. Plaintiff also requests general relief.

To the extent a separate memorandum of authorities is required, Movant requests the requirement be waived as the legal issues have been fully briefed in the record. Furthermore, in the event the amount of benefits is not certain at this time, the Plaintiff sought declaratory relief in his Complaint and the Court can

rule he is entitled to benefits and remand the matter to the Plan fiduciary for a determination of the exact benefits due.

Date: 08/30/2017

Respectfully submitted,

/s/ Richard Underwood

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CERTIFICATE OF SERVICE

A copy of the foregoing document has been served pursuant to Rule 5 of the Rules of Civil Procedure to:

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/s/Richard Underwood

Richard Underwood